

WOLLMUTH MAHER & DEUTSCH LLP

500 FIFTH AVENUE
NEW YORK, NEW YORK 10110

TELEPHONE (212) 382-3300
FACSIMILE (212) 382-0050

December 9, 2009

VIA ECF

Magistrate Judge E. Thomas Boyle
United States District Court
100 Federal Plaza
Central Islip, New York 11722

Re: Mariano v. LA Fitness International, LLC,
No. 09-CV-1395

Dear Judge Boyle:

We write regarding Plaintiff's request for an extension of fact discovery, which ends this Friday, December 11, 2009. As outlined below, this matter has been in fact discovery for over 4 months. During that time, Plaintiff has failed to engage in any discovery despite Defendants' numerous letters and telephone calls requesting that she do so. See Exhibit A. This conduct is indicative of Plaintiff's overall failure and unwillingness to prosecute this matter. For this reason, we oppose the request for the extension as Plaintiff has had sufficient time to engage in the discovery process. If an extension is granted, Defendants respectfully request that it be a one-time extension and that the Court grant no further extensions if requested by Plaintiff.

The record in this matter is as follows: on July 14, 2009, the parties conferred via telephone for a Rule 26(f) conference in which they agreed to a Proposed Discovery Order that contained the dates for the end of discovery. This includes the December 11, 2009 date for the end of fact discovery. As the Court will recall, on August 4, 2009 the Court held a Civil Conference, which Plaintiff failed to attend. At that Civil Conference, the Court approved the Discovery Order, including the December 11, 2009 end date for fact discovery. See Exhibit B.

On August 10, 2009, Defendants served written discovery demands, which Plaintiff has still not answered. Defendants also noticed the deposition of Plaintiff on November 12, 2009 (which is now scheduled for tomorrow). On September 30, November 12 and December 3, 2009, Defendants wrote letters to Plaintiff's counsel advising them that the responses to the written discovery demands were past due. See

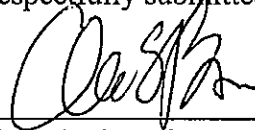
Exhibit A. Plaintiff simply ignored these letters and telephone calls, only recently promising to produce documents by the end of the day today.

As far as Plaintiff's counsel's claim that it did not receive the written discovery demands until only recently, which were served by Federal Express, attached as Exhibit C is the Federal Express label and signed receipt demonstrating that the written discovery demands were delivered on August 11, 2009 – a day after they were served. In addition, Plaintiff never once asked for the written discovery demands in response to my letters of September 30 and November 12, 2009 or questioned why they allegedly had not been served (which they were). This is obviously a manufactured excuse with no basis in fact.

During the four-month fact discovery period, Plaintiff has failed to serve her initial disclosures, any written discovery demands or notice any depositions. Plaintiff initiated this lawsuit, yet has not engaged in the discovery process or attended the Court Conference. The Court should not condone this behavior. For these reasons, Defendants respectfully request that the Court either deny Plaintiff's request for an extension of discovery or deny any additional requests if requested by Plaintiff.

WOLLMUTH MAHER & DEUTSCH LLP

Respectfully submitted,



By: Andrew S. Baron

500 Fifth Avenue
New York, New York 10110
(212) 382-3300
abaron@wmd-law.com

Counsel for Defendants

Enclosures

cc: Arnab Bhukta, Esq. (via email)
Counsel for Plaintiff

EXHIBIT A

WOLLMUTH MAHER & DEUTSCH LLP

500 FIFTH AVENUE
NEW YORK, NEW YORK 10110

TELEPHONE (212) 382-3300
FACSIMILE (212) 382-0050

September 30, 2009

VIA FEDERAL EXPRESS

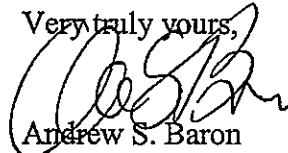
Anthony C. Donofrio, Esq.
Law Offices of Anthony C. Donofrio
5518 Merrick Road
Massapequa, New York 11758

Re: Mariano v. LA Fitness International, LLC,
USDC, EDNY, No. 09-CV-1395

Dear Anthony:

On August 10, 2009, we served Defendants' First Request for the Production of Documents and Defendants' First Set of Interrogatories. Your responses were due thirty days thereafter, yet we have not received them. Accordingly, please respond to Defendants' discovery demands immediately. In addition, you have failed to serve Initial Disclosures, which are also past due. Your continued failure to abide by the Court's Scheduling Order is unnecessarily delaying discovery. Please be advised that if you do not remedy your discovery failures by October 9, 2009, we will be forced to resort to motion practice.

Very truly yours,



Andrew S. Baron

WOLLMUTH MAHER & DEUTSCH LLP

500 FIFTH AVENUE
NEW YORK, NEW YORK 10110

TELEPHONE (212) 382-3300
FACSIMILE (212) 382-0050

November 12, 2009

VIA FEDERAL EXPRESS

Anthony C. Donofrio, Esq.
Law Offices of Anthony C. Donofrio
5518 Merrick Road
Massapequa, New York 11758

Re: Mariano v. LA Fitness International, LLC,
USDC, EDNY, No. 09-CV-1395

Dear Anthony:

Enclosed is a Notice of Deposition for Plaintiff's deposition on December 7, 2009 beginning at 10:00 am at our offices. I remind you that Defendants served their First Request for the Production of Documents and First Set of Interrogatories on August 10, 2009, and you still have not responded to them despite my prior correspondence requesting that you do so and the fact that they are over two months past due. Also, you have not yet served discovery demands, and if you do so, Defendants' responses will not be due until after the close of fact discovery, which is December 11, 2009. In addition, you never served Initial Disclosures.

Plaintiffs' continued failure to abide by the Court's Scheduling Order only highlights Plaintiffs' disinterest in prosecuting this matter. In that regard, Defendants reserve all rights and remedies.

Very truly yours,



Andrew S. Baron

Encl.

WOLLMUTH MAHER & DEUTSCH LLP

500 FIFTH AVENUE
NEW YORK, NEW YORK 10110

TELEPHONE (212) 382-3300
FACSIMILE (212) 382-0050

December 3, 2009

VIA FACSIMILE AND FEDERAL EXPRESS

Anthony C. Donofrio, Esq.
Law Offices of Anthony C. Donofrio
5518 Merrick Road
Massapequa, New York 11758

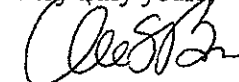
Re: Mariano v. LA Fitness International, LLC,
USDC, EDNY, No. 09-CV-1395

Dear Anthony:

As you are aware, Defendants noticed the deposition of Plaintiff for December 7, 2009 beginning at 10:00 am at our offices. Though Defendants served their First Request for the Production of Documents and First Set of Interrogatories on August 10, 2009, Plaintiff still has not responded to them despite my numerous letters and telephone calls requesting that Plaintiff do so. This makes it impossible to proceed with Plaintiff's deposition.

Defendants are prepared to adjourn Plaintiff's deposition until December 11, 2009 at 10:00 am if Plaintiff commits to producing her discovery responses so they are received by December 7, 2009. Please confirm by 5:00 pm tomorrow whether Plaintiff will do so. If not, Defendants will seek appropriate relief from the Court.

Very truly yours,



Andrew S. Baron

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
YVETTE MARIANO,

Plaintiff,

v.

LA FITNESS INTERNATIONAL, LLC, d/b/a a/k/a LA
FITNESS, INC., LA FITNESS and LA FITNESS
SPORTS CLUBS, and ANABELL SERANO a/k/a
ANDY SERANO

Defendants.
----- X

No. 09-CV-1395 (LDW) (ETB)

PROPOSED
DISCOVERY ORDER

E. THOMAS BOYLE, Magistrate Judge:

The following persons participated in a Rule 26(f) conference on July 14, 2009 via telephone:

Arnab Bhukta, Esq., counsel for Plaintiff Yvette Mariano ("Plaintiff"); and
Andrew S. Baron, Esq., counsel for Defendants LA Fitness International, LLC
and Anabell Serano ("Defendants").

1. The deadline for motions to amend pleadings including joinder of additional parties is August 7, 2009.
2. The date for service of initial document production demands and interrogatory requests is August 7, 2009 with responses served within thirty (30) days.
3. The deadline for seeking approval to file any motion for summary judgment is 30 days after close of fact discovery.
4. The date for submission of the pre-trial order is sixty (60) days after close of discovery.
5. All fact discovery to be completed by December 11, 2009. All expert disclosures, including reports, production of underlying documents and depositions are to be completed by Plaintiff 45 days after close of fact discovery. All expert disclosures, including reports, production of underlying documents and depositions are to be completed by Defendants 45 days after submission of Plaintiff's expert disclosures. All discovery to be completed no later than 90 days after completion of fact discovery.
6. The parties do not anticipate the disclosure and discovery of electronically stored information.

7/11/09

9

7. Claims of privilege, including the procedure to follow for returning inadvertently produced materials, to be handled in accordance with Rule 26(b)(5) of the Fed. R. Civ. Proc.

SO ORDERED.

DATED: New York, New York
8/4/09, 2009

/s/ E. Thomas Boyle, U.S.M.J.

E. THOMAS BOYLE
UNITED STATES MAGISTRATE JUDGE

EXHIBIT C

edEx Express **US Airbill**FedEx
Tracking
Number

8684 8413 1302

EX

0215

Sender's Copy

NOTE: Please print and prepay here.

8/10/09
 Sender's FedEx Account Number 2262-9119-9
 Shipper's name Andrew S. Barton Phone (212) 382-3300

Company WOLLMUTH MAHER & DEUTSCH LLP

Address 500 5TH AVE STE 1200

Dept./Floor/Suite/Room

City NEW YORK State NY ZIP 10110-0002

Our Internal Billing Reference
 24 characters will appear on invoice.

5207-002

Shipper's name Anthony C. Donofrio Phone ()
 Company Law Offices of Anthony C. Donofrio
 Shipper's address 5518 Merrick Rd.

Dept./Floor/Suite/Room

Address Massapequa
 Request a package be held at a specific FedEx location, print FedEx address here.

State NY ZIP 11758

0393971071

4a Express Package Service

Packages up to 150 lbs.

☒ FedEx Priority Overnight
 Next business morning.* Friday
 shipments will be delivered on Monday
 unless SATURDAY Delivery is selected.

☐ FedEx Standard Overnight
 Next business afternoon.*
 Saturday Delivery NOT available.

☐ FedEx First Overnight
 Earliest next business morning
 delivery to select locations.*
 Saturday Delivery NOT available.

☐ FedEx 2Day
 Second business day.* Thursday
 shipments will be delivered on Monday
 unless SATURDAY Delivery is selected.

☐ FedEx Express Saver
 Third business day.*
 Saturday Delivery NOT available.

FedEx Envelope rate not available. Minimum charge: One-pound rate.

* To most locations.

4b Express Freight Service

Packages over 150 lbs.

☐ FedEx 1Day Freight*
 Next business day.* Friday
 shipments will be delivered on Monday
 unless SATURDAY Delivery is selected.

☐ FedEx 2Day Freight
 Second business day.* Thursday
 shipments will be delivered on Monday
 unless SATURDAY Delivery is selected.

☐ FedEx 3Day Freight
 Third business day.*
 Saturday Delivery NOT available.

* Call for Confirmation.

** To most locations.

5 Packaging

☒ FedEx Envelope*
 Includes FedEx Small Pak,
 FedEx Large Pak, and FedEx Sturdy Pak.

☐ FedEx Pak*
 Includes FedEx Small Pak,
 FedEx Large Pak, and FedEx Sturdy Pak.

☐ FedEx Box

☐ FedEx Tube

☐ Other

* Declared value limit \$500.

6 Special Handling

Include FedEx address in Section 3.

☐ SATURDAY Delivery
 NOT Available for
 FedEx Standard Overnight,
 FedEx First Overnight, FedEx Express
 Saver, or FedEx 3Day Freight.

☐ HOLD Weekday
 at FedEx Location
 NOT Available for
 FedEx First Overnight.

☐ HOLD Saturday
 at FedEx Location
 Available ONLY for
 FedEx Priority Overnight and
 FedEx 2Day to select locations.

Does this shipment contain dangerous goods?
 One box must be checked.

☒ No
☐ Yes
 As per attached
 Shipper's Declaration.

☐ Yes
 Shipper's Declaration
 not required.

☐ Dry Ice
 Dry Ice, 9, UN 1845 x kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

☐ Cargo Aircraft Only

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.

☒ Sender
 Acct. No. in Section
 1 will be billed.

☐ Recipient

☐ Third Party

☐ Credit Card

☐ Cash/Check

FedEx Acct. No.
 Credit Card No.

Exp.
 Date

Total Packages

Total Weight

Total Declared Value†

1

\$.00

†Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the
 service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

8 Residential Delivery Signature Options

If you require a signature, check Direct or Indirect.

☐ No Signature
 Required
 Package may be left
 without obtaining a
 signature for delivery.

☒ Direct Signature
 Someone at recipient's
 address may sign for
 delivery. Fee applies.

☐ Indirect Signature
 If no one is available at
 recipient's address, someone
 at a neighboring address may
 sign for delivery. Fee applies.

519

Rev. Date 10/06-Part #158279-©1994-2006 FedEx-PRINTED IN U.S.A.-SRS

Ship and track packages at fedex.com
 Simplify your shipping. Manage your account. Access all the tools you need.



FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone: 901-369-3600

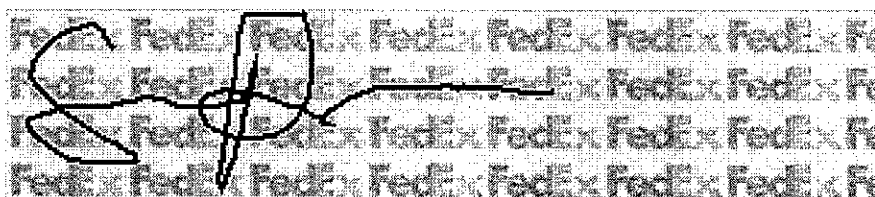
December 9, 2009

Dear Customer:

The following is the proof-of-delivery for tracking number 868484131302.

Delivery Information:

Status:	Delivered	Delivery date:	Aug 11, 2009 10:28
Signed for by:	S.BRONNER		
Service type:	Priority Overnight		



Shipping Information:

Tracking number:	868484131302	Ship date:	Aug 10, 2009
-------------------------	--------------	-------------------	--------------

Recipient:
MASSAPEQUA, NY US

Shipper:
NEW YORK, NY US

Reference 5207-002

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service
1.800.GoFedEx 1.800.463.3339